

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FILED

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FIRST JUDICIAL DISTRICT

Case Type: Mechanic's Lien Foreclosure

SCOTT COUNTY COURTS

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Stewart Plumbing, Inc.,

Scott County Court File: 70-CV-08-12187

Plaintiff,

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

vs.

Alex Hernandez, Beilen Hernandez,
M.W. Johnson Construction, Inc.,
Countrywide Bank, FSB, Automated
Building Components, Inc., Slate
Cement, Inc., Pyramid Enterprises,
Inc., Elite Waste Disposal,

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Stewart Plumbing, Inc.'s ("Stewart") Motion for Summary Judgment. Susanne M. Glasser, Esq. appeared on behalf of Stewart. Steven R. Little, Esq. appeared on behalf of Defendants Alex Hernandez and Beilen Hernandez (the "Hernandezes") and Countrywide Bank, FSB ("Countrywide"). The Court, having been fully advised in the premises, together with all of the files and proceedings herein, makes the following:

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Scott County, Minnesota, legally described as follows:

Lot 13, Block 26, Countryside

(the "Property").

2. Stewart entered into a contract or series of contracts with M.W. Johnson Construction, Inc. under which Stewart provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to Alex Hernandez by way of a warranty deed dated August 24, 2007, which was recorded with the Office of the Scott County Recorder on August 31, 2007, as Document No. 781979. The Hernandezes are the current fee owners of the Property.

4. Countrywide is the holder of a mortgage, secured by the Property, and dated August 24, 2007, given by the Hernandezes, as mortgagors, in favor of Countrywide, as mortgagee, recorded with the Office of the Scott County Recorder on August 31, 2007, as Document No. 781980 (the "Countrywide Mortgage").

5. Stewart recorded a mechanic's lien statement against the Property dated August 22, 2007, in the original principal amount of \$9,400.00, with the Office of the Scott County Recorder on August 24, 2007, as Document No. 781453 ("Stewart's Mechanic's Lien Statement").

6. Stewart's last item of improvement to the Property was July 24, 2007.

7. Stewart commenced this action on May 22, 2008, within one year of its last item of improvement to the Property.

8. Stewart's Mechanic's Lien is valid in the original principal amount of \$9,400.00 and is prior and superior to the rights, title and interests of the Hernandezes and Countrywide in the Property.

9. Defendant Slate Cement, Inc. ("Slate") recorded a mechanic's lien statement against the Property with the Office of the Scott County Recorder on November 14, 2007, as Document No. 787750 ("Slate Mechanic's Lien").

10. Slate failed to answer Stewart's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

11. More than one year has passed since the last item of improvement of July 17, 2007 that Slate claimed it provided for the Property as set forth in its Mechanic's Lien Statement.

12. Defendant Pyramid Enterprises Inc. ("Pyramid") recorded a mechanic's lien statement against the Property with the Office of the Scott County Recorder on November 14, 2007, as Document No. 787752 ("Pyramid Mechanic's Lien").

13. Pyramid failed to answer Stewart's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

14. More than one year has passed since the last item of improvement of July 19, 2007 that Pyramid claimed it provided for the Property as set forth in its Mechanic's Lien Statement.

15. Defendant Elite Waste Disposal ("Elite") recorded a mechanic's lien statement against the Property with the Office of the Scott County Recorder on November 27, 2007, as Document No. 788386 ("Elite Mechanic's Lien").

16. Elite failed to answer Stewart's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

17. More than one year has passed since the last item of improvement of August 23, 2007 that Elite claimed it provided for the Property as set forth in its Mechanic's Lien Statement.

18. Defendant Automated Building Components ("ABC") is the former holder of a mechanic's lien against the Property. ABC recorded a release of its mechanic's lien statement with the Office of the Scott County Recorder on November 6, 2008, as Document No. 811831. All claims by or against ABC in this action have been dismissed by Stipulation and Order of this Court entered on November 7, 2008.

CONCLUSIONS OF LAW

1. Stewart is entitled to summary judgment.
2. Stewart's Mechanic's Lien against the Property is valid and enforceable in the amount of \$9,400.00 in principal, together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 927.08 through Oct. 22, 2009, which continues to accrue at the rate of \$ 1.03 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 1,833.60 and costs and disbursements in the amount of \$ 1,175.40 for a total judgment of \$ 13,354.62.
3. Stewart's Mechanic's Lien is prior and superior in all respects to the Hernandezes' and Countrywide's interests in the Property.
4. The Mechanic's Liens of Slate, Pyramid and Elite, as described herein, are all expired and are void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.
5. Stewart's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Scott County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.

6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Stewart with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.

7. The sale shall be reported to and made subject to the approval of this Court. At that time, Stewart may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

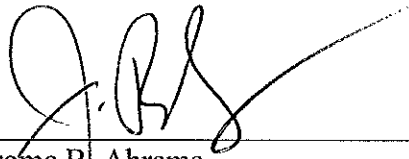
8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that the Hernandezes and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the MERS Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Stewart's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Scott County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment for recording against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:

Dated: 11-5, 2009



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-08-12187

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 11-9-09
GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY Audrey K Brown